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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/498,099	02/04/2000	John G. Waclawsky	CIS99-1714	8317
7590	10/07/2003		EXAMINER	
CHAPIN & HUANG, L.L.C. Westborough Office Park 1700 West Park Drive Westborough, MA 01581			SHAH, CHIRAG G	
			ART UNIT	PAPER NUMBER
			2664	
			DATE MAILED: 10/07/2003	6

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	09/498,099	WACLAWSKY ET AL.
Examiner	Art Unit	
Chirag G Shah	2664	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 28 July 2003 .

2a) This action is **FINAL**. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-31 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 1-31 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on _____ is: a) approved b) disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some * c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) Notice of References Cited (PTO-892) 4) Interview Summary (PTO-413) Paper No(s). _____ .
2) Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) Notice of Informal Patent Application (PTO-152)
3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____. 6) Other: _____ .

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 4, 5, 8, 9, 11, 14, 15, 18, 19, 21 and 24-31 rejected under 35 U.S.C. 103(a) as being unpatentable over Rickard ("Mapping The Internet With Traceroute") in view of Hunt et al. (U.S. Patent No. 5,898,671).

Referring to claims 1, 5, 9, 11, 15, 19 and 21, Rickard discloses in pages 5, paragraph 4 to page 6 of the method and an apparatus of generating, for a data element (TTL), a value for a parameter within the data element that will cause the node of the network to determine that the data element is stale when the node of the network receives the data element; sending the data element to the node the network and receiving a signal from the node of the network (page 5, paragraphs 4 and 5), the signal (ICMP message) including an indication that the node of the network has removed the data element for the network. Rickard fails to disclose a second signal including a resource usage information describing usage of resources within the node of the network. Hunt discloses in the abstract, figure 1, column 2, lines 1-32, column 3, lines 20-55, and claim 9 and respective portions of the specification of a control technique, where a feedback message (backpressure signal) is sent back from a receiver to the transmitter, giving the status of the resource within the node. The backpressure signal is transmitted back from the receiver

(destination) to the transmitter indicative of the state of the fullness of buffer (resource) to the transmitter switch (source). Such feedback messages could contain, the number of available resources, the number of cells held for each connection or the number of resources freed. Therefore, it would have been obvious to one of ordinary skill in the art to modify the teachings of Rickard to include the teachings of Hunt in order to enhance performance and reduce congestion from occurring in the network.

Referring to claims 4, 8, 14, 18 and 24, Rickard discloses in pages 5 and 6 of a signal including an indication that the node of the network has removed the data element from the network. Rickard fails to disclose the method further comprises the step of extracting the resource usage information from the signal and updating contents of the database with the extracted resource usage information and tuning the node of the network based on the updated contents of the database. Hunt discloses in column 2, liens 1-31 and in figure 2 and respective portions of the specification that upon the transmitter receiving the feedback message (backpressure signal) from the receiver, the transmitter calculates the maximum resource fullness, thus controlling the number of packet to be transmitted based upon the allocation technique. Therefore, it would have been obvious to one of ordinary skill in the art to modify the teachings of Rickard to include the teachings of Hunt in order to enhance performance based on transmission control, further reducing congestion from occurring in the network.

Referring to claims 25-31, Rickard discloses in pages 5, paragraph 4 to page 6 wherein that node is an intermediate device disposed between the computer and a target device, and wherein the step of sending the data element to the node includes the step of : formatting the data element (TTL) as a packet having a destination address (page 6, paragraph 3) that identifies the

target device and a TTL value which causes the node to consider the data element to be a stale packet upon receipt of the data element by the node as claim.

3. Claims 2, 6, 10, 12, 16, 20 and 22 rejected under 35 U.S.C. 103(a) as being unpatentable over Rickard ("Mapping The Internet With Traceroute) in view of Hunt et al. (U.S. Patent No. 5,898,671) as applied to claims 1, 4, 5, 8, 9, 11, 14, 15, 18, 19, 21 and 24 above, and further in view of Karmi (U.S. Patent No. 6,535,523).

Referring to claims 2, 6, 10, 12, 16, 20 and 22, Rickard in view of Hunt fail to teach the step of acquiring, as the resource usage information, a history which identifies a combination of the multiple resources that processed the data element as a non-stale data element. Karmi teaches of a system of distributing the available capacity of resources with maximum resource utilization among node users. Karmi discloses in figure 4 and respective portions of the specification wherein the control unit receives information related to usage of resources, including history that identifies combination of the multiple resources that processed the data element as a non-stale data element. Therefore, it would have been obvious to one of ordinary skill in the art to modify the teachings of Rickard in view of Hunt to include the teachings of Karmi in order to prevent overload and network congestion.

4. Claims 3, 7, 13, 17, and 23 rejected under 35 U.S.C. 103(a) as being unpatentable over Rickard ("Mapping The Internet With Traceroute) in view of Hunt et al. (U.S. Patent No. 5,898,671) as applied to claims 1, 4, 5, 8, 9, 11, 14, 15, 18, 19, 21 and 24 above, and further in view of Ahearn (U.S. Patent No. 5,926,463).

Referring to claims 3, 7, 13, 17 and 23, Rickard in view of Hunt fail to explicitly teach of the parameter within the data element is a TTL field, wherein the signal is an ICMP error

message and wherein the step of receiving includes the step of acquiring as the indication that the node of the network has removed the data element from the network, a notification that the limit to the number of remaining nodes which can process the data element within the network has been reached. Ahearn teaches of managing configurations of a computer network. Ahearn discloses in column 20, lines 65 to column 21, lines 61 of using the BA Traceroute tool, where router operates by sending out a packet to a DA with a TTL set to a small value. ICMP error message indicate the packet could not be delivered because the TTL expired. This process continues, increasing the TTL value until the destination is reached. Note that every router implements the ICMP TTL expired response. Since traceroute is used to test connectivity, once the ICMP comes back with an error message, the step of acquiring takes place in terms of having an indication that the node of the network has removed the data element from the network. Therefore, it would have been obvious to one of ordinary skill in the art to modify the teachings of Rickard in view of Hunt to include the teachings of Ahearn in order to receive a confirmation message without a long latency period of status information regarding removed data element from the network.

Response to Arguments

5. Applicant's arguments with respect to claims 1-31 have been considered but are moot in view of the new ground(s) of rejection.

Any response to this action should be mailed to:

Commissioner of Patents and Trademarks
Washington, D.C. 20231

Or faxed to:

(703)305-3988, (for formal communications intended for entry)

Or:

(703)305-3988 (for informal or draft communications, please label "Proposed" or "DRAFT")

Hand-delivered responses should be brought to Crystal Park II, 2021 Crystal Drive, Arlington, VA., Sixth Floor (Receptionist).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Chirag G Shah whose telephone number is 703-305-5639. The examiner can normally be reached on M-F 8:30 to 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wellington Chin can be reached on 703-305-4366. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-305-3900.

cgs

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